

SERVICE DATE – APRIL 14, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 551 (Sub-No. 2X)

KNOX AND KANE RAILROAD COMPANY—
ABANDONMENT EXEMPTION—MCKEAN COUNTY, PA.

Decided: April 13, 2015

On February 26, 2015, Knox and Kane Railroad Company (Knox & Kane) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service to abandon a line of railroad between Mt. Jewett, Pa. (milepost 165.2) and the Kinzua Bridge (milepost 169.1), a distance of 3.9 miles in McKean County, Pa. (the Line).

In its verified notice of exemption, Knox & Kane states that it seeks an exemption to abandon the Line “so the line can be conveyed to [the Headwaters Charitable Trust] incident to this abandonment proceeding under the provisions of the National Trail Systems Act.”¹ However, in the environmental report submitted with its verified notice of exemption, Knox & Kane states that “[t]he Kovalchick Corporation presently owns the 3.9 mile Knox & Kane right of way, subject to Knox & Kane operating rights.”² Knox & Kane’s verified notice of exemption does not indicate how Knox & Kane would abandon the Line or convey it to the Headwaters Charitable Trust if Knox & Kane does not own the Line and instead has only operating rights.

Further, when Knox & Kane constructed the Line, its petition to the Interstate Commerce Commission (ICC) stated that “[t]he right-of-way between Mt. Jewett and Kinzua Bridge has been recently acquired by Knox & Kane through a combination of purchase from a private party and a lease from the Bureau of State Parks.”³ Knox & Kane’s verified notice of exemption in this docket does not state when ownership of this right-of-way was transferred from Knox & Kane to the Kovalchick Corporation (Kovalchick) or whether authorization for that transaction was obtained from the ICC or the Board pursuant to 49 U.S.C. § 10901.

In addition, in a letter sent to the Pennsylvania Historical and Museum Commission on December 23, 2009, Knox & Kane stated that “[t]he Kovalchick Corporation purchased the

¹ Knox & Kane Notice 3-4.

² Knox & Kane Env'tl. Report 2-3.

³ Knox & Kane Pet. for Exemption, FD 31018, Mar. 25, 1987, at 2.

common stock of Knox & Kane in 2008.”⁴ An attachment to that letter notes that Kovalchick “also owns the East Broad Top Railroad.”⁵ Knox & Kane’s verified notice of exemption does not indicate whether Kovalchick obtained authorization for its acquisition of control of Knox & Kane pursuant to 49 U.S.C. § 11323(a)(5).

Finally, in 2009, Knox & Kane sought and obtained an exemption for the abandonment of a 69.9-mile line of railroad between milepost 95.3, at North Clarion Junction, Pa., and milepost 165.2, at Mt. Jewett, Pa.⁶ In its verified notice of exemption in that proceeding, Knox & Kane stated that “[t]he abandonment encompasses the entire Knox & Kane line. Accordingly, no labor protective conditions are appropriate.”⁷ The Board relied on this information in determining not to impose labor protective conditions in connection with Knox & Kane’s 2009 abandonment.⁸ Knox & Kane’s current request for an exemption to abandon another segment of its railroad line casts doubt on the accuracy of its statement that the 2009 abandonment “encompasse[d] the entire Knox & Kane line.”

Thus, Knox & Kane’s filing raises questions regarding, among other things:

1. Whether Knox & Kane has sufficient rights to the Line to seek abandonment authorization;
2. Whether Board authority should have been sought for the apparent Knox & Kane transfer of the right-of-way to Kovalchick and the acquisition of control of Knox & Kane by Kovalchick, at the time the owner of East Broad Top Railroad; and
3. Whether Knox & Kane accurately certified in its 2009 verified notice of exemption in Docket No. AB 551 (Sub-No. 1X), that the segment for which it sought an abandonment exemption was its “entire line.”

⁴ The December 23, 2009 letter, which Knox & Kane submitted to the Board as environmental correspondence in connection with a prior abandonment proceeding in Docket No. AB 551 (Sub-No. 1X), is available at [http://www.stb.dot.gov/ect1/ecorrespondence.nsf/PublicIncomingByDocketNumber/2C8F00A48FEDC004852576A3006A90D7/\\$File/EI-18018.pdf](http://www.stb.dot.gov/ect1/ecorrespondence.nsf/PublicIncomingByDocketNumber/2C8F00A48FEDC004852576A3006A90D7/$File/EI-18018.pdf).

⁵ See also E. Broad Top R.R. Pres. Ass’n—Acquis. & Operation Exemption—Kovalchick Salvage Corp., FD 35823 (STB served June 17, 2014) (belated exemption for Kovalchick’s transfer of the East Broad Top Railroad to the East Broad Top Railroad Preservation Association in 2013, noting that Kovalchick acquired one segment of the East Broad Top Railroad in 1997).

⁶ Knox & Kane R.R.—Aban. Exemption—in Clarion, Forest, Elk & McKean Cntys., Pa., AB 551 (Sub-No. 1X) (STB served Oct. 23, 2009).

⁷ Knox & Kane Notice, AB 551 (Sub-No. 1X), Oct. 5, 2009, at 5.

⁸ Knox & Kane R.R.—Aban. Exemption—in Clarion, Forest, Elk & McKean Cntys., Pa., AB 551 (Sub-No. 1X), slip op. at 2 (STB served Oct. 23, 2009).

Knox & Kane will be directed to submit supplemental information addressing these key questions raised by its notice of exemption by May 5, 2015. The effective date of the exemption will be postponed until further order of the Board.⁹

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Knox & Kane is directed to submit supplemental information addressing the issues set forth above by May 5, 2015.
2. The effective date of the exemption is postponed until further order of the Board.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

⁹ The Board's Office of Environmental Analysis served an environmental assessment in this proceeding on March 23, 2015. Thus, the environmental review process is already underway and will not be held in abeyance.